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NO 80-250

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,

PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARD and JOHN C. DENYER, JOINTLY, SEVERALLY AND INDIVIDUALLY, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION,

McCLINTOCK DONOVAN CARSON & ROACH AND JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, ATTORNEYS AT LAW, JOINTLY, SEVERALLY AND INDIVIDUALLY,

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, ATTORNEYS AT LAW, JOINTLY, SEVERALLY, AND INDIVIDUALLY,

FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE,

MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, JOINTLY, SEVERALLY AND INDIVIDUALLY,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ~~AND TO THE MICHIGAN SUPREME COURT~~

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TO THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

TO THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, Virginia cramer, in propria persona, hereby petitions for a writ of certiorari to review the Order of the United States Court of Appeals for the Sixth Circuit, entered without opinion on May 5, 1980, affirming dismissal of the action, cutting off litigation in ruthless violation of the Fourteenth Amendment to the United States Constitution, contravening Federal Rules of Appellate Procedure Rule 26 (a) and subparagraph 26 (c), Rule 27 (a) and Sixth Circuit Local Rules 8 and 9 in the absence of a motion to affirm and which would have been impermissable, and contravening the extension of time granted to May 20, 1980, for Petitioner-appellant to file her brief on appeal (See, docket entry 14, page 10a Volume I; and page 497a Volume II, No. 80-1118; pages 556a, 557a, Volume II, Petitioner's Appendix); and to review the Michigan Supreme Court decision

dated October 6, 1977, as reported at 401 Mich 252, herein appended as EXHIBIT "A", Volume I, pages 134a thru 145a, and again included herein as Appendix AA, Cramer vs Metropolitan Savings and Loan, et al.

The Michigan Supreme Court decision allows foreclosure of real property mortgaged, based upon so-called "escrow" funds for which the mortgagee (who requires said "escrow" funds) is "bound to do nothing" with said "escrow" funds collected as set forth in the provisions of a mass mortgage contract in wide-spread use by banking and lending institutions throughout the United States.

Further, the provisions of the unilateral restrictive covenant which requires a mortgagor to pay said "escrow" funds to the mortgagee (who is bound to do nothing with the "escrow" funds collected) also prohibit, inhibit, prevent and preclude a mortgagor from paying taxes, insurance

and other assessments as they become due on the real property mortgaged.

Further, the Michigan Supreme Court decision, reported at 401 Mich 252, is based on false facts, and said court refused to correct their defective decision on motions for rehearing and reconsideration; the basis of the said decision by the Michigan Supreme Court is the enforcement of the precise conduct made unlawful by the intent of the Sherman and Clayton Act (15 USC 1 and 2, et seq.), and/or alternatively, is in conflict with the controlling principle of Shelley v Kraemer, 334 US 1, 68 S Ct 836, 92 L Ed 1161, and Barrows v Jackson, 346 US 249, 73 S Ct 1031, 97 L Ed 1586.

Further, the Michigan Foreclosure by Advertisement Statute (MCLA 600.3201 et seq.; MSA 27A.3201 et seq.) as erroneously applied to "escrow" funds as a "condition" of the mortgage, contravenes and is repug-

nant to the Fourteenth Amendment of the United States Constitution, since the statute (on foreclosure) does not vest lenders with the function of assessing and collecting taxes on real property, and such function is unconstitutional as violative of the Fourteenth Amendment's due process clause, and such overreaching by the mortgagee-lending-institutions should be prohibited, when no taxes and no insurances are due; none were assessed, none were billed and none were unpaid, at the time of the foreclosure initiated by the mortgagee-Metropolitan Federal Savings and Loan Association, in the instant case.

Further, the decision of the Michigan Supreme Court (reported at 401 Mich 252) is "state action" involved in clear imprimatur of the offensive conduct of the mortgagee-lender in sanctioning such foreclosure and is repugnant to the due process and equal protection clauses of

the Fourteenth Amendment to the United States Constitution, and violative of the intent of the Sherman and Clayton Act, 15 USC 1 and 2 et seq., and in granting the mortgagee-lending institutions and banks a monopoly to enjoy the fruits of other people's money for which the mortgagee is "bound to do nothing," with the said "escrow" moneys belonging to the mortgagor. The "state action" involved is related to the challenged activity since the said "escrow" funds impliedly represent taxes as may, in the future, be assessed on said real property, but which is strictly the liability of the title-holder of the property, the mortgagor.

OPINIONS BELOW

The "Order" dated May 5, 1980, of the United States Court of Appeals, Sixth Circuit, is without opinion and unpublished. It is appended hereto as Appendix EE.

The "Order of Dismissal In Part and Order

of Remand In Part" dated January 17, 1980, entered in the United States District Court, Southern Division-Detroit, is without opinion and has not been published. It is appended hereto as Appendix DD.

The decision of the Michigan Supreme Court, under date of October 6, 1977, is reported at 401 Mich 252, and is included hereto as Appendix AA.

QUESTIONS PRESENTED FOR REVIEW

1. Is there a significantly close nexus between the State and the challenged action of a foreclosure based upon "escrow" moneys and State encouragement in judicial interpretation and enforcement of the Michigan Foreclosure by Advertisement statutory provisions as a "condition" of the mortgage, in repugnance to the Fourteenth Amendment to the United States Constitution, where said mortgagee utilized said foreclosure by advertisement statute (MCLA 600.3201 et seq.; MSA 27A.3201 et seq.) as a hostile

process and leverage to obtain said "escrow" moneys or forfeiture of the real property from the mortgagor, and with which said "escrow" moneys the mortgagee is bound to do nothing; Is "state action" involved in sanctioning the foreclosure and the possible taking of the property based on said requirements of "escrow" moneys for the mortgagee's self-dealing purposes when no taxes and no insurances were assessed, billed, due or unpaid, and there was no deficiency in mortgagor's "escrow" account; instead there was a credit surplus balance in "escrow" belonging to the mortgagor at the time of the foreclosure?

2. Is it a breach by the mortgagee, under the terms of a mortgage (promissory) note and the mortgage covenant and agreement, to retract the forbearance provisions or waiver terms of said mortgage note and to initiate a foreclosure action during the period of 15-days following the due

date for a current monthly installment, when no penalty or late charge is applicable for a payment made by a mortgagor during said 15-day period, and which said payment was then refused by the mortgagee "on account of the foreclosure"?

3. Is a mortgage contract illegal and/or unenforceable, by the intent of the Sherman and Clayton Act (15 USCA 1 and 2, et seq., Sections 1-7 and 12-27), where the provisions of said contract prohibits and/or inhibits a mortgagor from paying taxes and insurance on the real property mortgaged while a mortgagor is required by the terms of said mortgage covenant and agreement to pay "escrow" moneys to a mortgagee who is bound to do nothing with the said "escrow" moneys, and thereby lessening competition?

4. Is it a denial of due process of law, contravening the provisions and limitations of the Fourteenth Amendment to the United

States States Constitution, to effect a Sheriff's Sale of property, slandering title, where said Sheriff's Sale of October 1st was held and completed only three (3) days after the entry of a Court order (dated September 27th) which did not authorize said Sheriff's Sale but was effected contravening numerous Michigan State Statutes as a judicial foreclosure, among which, in violation of MCLA 600.3105; MSA 27A.3105 which required "after a judgment has been rendered * * * no separate proceeding shall be had for the recovery of the debt secured by the mortgage, or any part of it, unless authorized by the court." (emphasis added) Is the Sheriff's Sale and redemption thereof void or voidable ?

5. Did the State court err, in violation of Petitioner's independent constitutional right of self-representation and to proceed without counsel, in a civil action,

by requiring and forcing Petitioner to hire a lawyer who by fraud, concealment, deceit, and invidiously discriminatory practices in conflict of interests, caused the denial of due process of law and the denial of equal protection of the laws, by obstructing justice in conspiratorial misconduct; and is state action involved in contravention of the limitations imposed upon the State by the Fourteenth Amendment guarantees to your Petitioner?

6. In authorizing a mortgagee to proceed with the foreclosure based upon "escrow" moneys only, where no "default" on the part of the mortgagor was shown, no exhibits and no identifications were entered into the record by the mortgagee, or on behalf of the mortgagee, to support their allegations of a "deficiency" in "escrow"; and where the Michigan Supreme Court (at 401 Mich 252) decision sanctions the foreclosure pursuant to the state's

common-law policy of private right to contract, is the State judicial action immunized ?

7. Where mortgagee-lending-institutions claim they are "bound by federal regulations" to require "escrow" moneys as terms and conditions on all home mortgages granted, should the Federal Home Loan Bank Board be restrained and enjoined from refusing to issue cease-and-desist orders against the 5,000 or more associations, nationally, as participants of unsafe and unsound practices, where millions of mortgages are held with the so-called "escrow" clauses in monopolization of said funds, but unenforceable, and tending to be violative of 15 USCA 1 and 2, et seq., and in repugnance to the Fifth and Fourteenth Amendments to the Constitution of the United States ?

JURISDICTION

The "Order" of the United States Court of Appeals, Sixth Circuit, sought to be reviewed was made and entered on May 5, 1980. Rehearing was not sought for the reason that said Court of Appeals "Order" was entered prior to the submitting of Appellant's brief on appeal which was to have been filed on/or before May 20, 1980. The appeal sought was to have included the "Order of Dismissal In Part and Order of Remand In Part" entered on January 17, 1980 in the United States District Court, Southern Division-Detroit, and which your petitioner claims that it was error by the Court to remand to a jurisdiction other than from the jurisdiction where the "case" was pending at the time your petitioner-appellant sought "removal" of the entire State case matter to the Federal court. The statutory provision believed to confer jurisdiction on this Court to

review the "Order" of the United States Court of Appeals is 28 USC 1254 (1).

Further, the Michigan Supreme Court members are parties-defendants in this federal action commenced in the Federal district court, and involving said decision of the Michigan Supreme Court reported at 401 Mich 252, and the State case. Petitioner-Cramer invoked the provisions of 42 USCA 1983, 1985, et seq. in the Federal court action and where in the State case for which "removal" was sought, prior to removal, the Michigan Supreme Court refused to hear the matter to correct the defective decision as reported at 401 Mich 252. The statutory provision believed to confer jurisdiction on this Court to review the judgment in question is 28 USCA 1257(3) and under the provisions of Article III of the United States Constitution.

Further, Petitioner claims that "state action" is involved in being forced to hire an attorney and who caused the denial of

of due process of law and denial of the equal protection of the laws, in ruthless violation of her guaranteed constitutional rights and in repugnance to the provisions of the Sixth Amendment to the United States Constitution, in repugnance to the provisions of the Michigan Constitution of 1963, Article 1, section 13, and contravening statutory provisions as set forth in MCLA 600.1430; MSA 27A.1430. The statutory provision believed to confer jurisdiction on this Court to review the entire State case involving the invidiously discriminatory practices, malpractices, fraud, concealment and deceit of lawyers acting in perversion of camaraderi as conspirators and co-conspirators in obstructing justice, in exploitation practices against their own client, is 28 USC 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5, United States Constitution, prohibiting the deprivation of property without just compensation;

Amendment 14, United States Constitution, as a limitation on governmental or state action, but not a limitation on private action.

42 USC 1983, 1985, et seq., 28 USC 1337, 15 USC 1 and 2, et seq.

Michigan Constitution of 1963, Article 1, Section 13, and MCLA 600.1430; MSA 27A. 1430 permitting appearance in person or by attorney.

STATEMENT OF THE CASE

The jurisdiction of the United States District Court (Southern Division-Detroit) was based upon 42 USCA 1983, 1985, et seq., and involving multiple defendants and co-defendants, as herein shown in the above-captioned case.

Petitioner Virginia Cramer (mortgagor in wrongful foreclosure action, hereinafter "mortgagor-Cramer") has never been allowed to have her day in court on said foreclosure, in ruthless violation of the Fourteenth Amendment to the United States Constitution, to prove that she was never in default of a certain mortgage loan and mortgage note and that there was no basis for the foreclosure action initiated by the mortgagee Metropolitan Federal Savings and Loan Association (hereinafter "mortgagee-Metro").

"Mortgagee-Metro" breached the terms and conditions of the divisible mortgage

note (divisible from the covenant) and initiated the foreclosure proceedings well within the 15-day forbearance or waiver period of the said mortgage note when no penalty or late charges would be applicable, and accelerated the principal debt balance based solely on their "requirements" for "escrow" funds for the alleged future liabilities of taxes and insurance when may become due on the real property mortgaged, in advance.

"Mortgagee-Metro" alleged an "escrow" deficiency in mortgagor-Cramer's "escrow" account when there was actually a credit balance in her "escrow" account, part of which was applied in reduction of the principal balance owing on the mortgage loan, as shown on the Sheriff's Bidding Statement of the sale of said mortgaged property; and part of which (escrow credit) was utilized by the mortgagee-Metro to pay the annual premium in advance for mortgage insurance to Mortgage Guaranty Insurance

Corporation (MGIC) approximately two (2) months after the said Sheriff's sale. The "escrow" credit balance were moneys belonging to mortgagor-Cramer.

BACKGROUND OF FACTS

On July 29, 1963, Petitioner-Cramer purchased her residence real property by obtaining a mortgage loan from Metropolitan Federal Savings and Loan Association, as follows:

Purchase price	$18,950.00
Down payment (cash)	2,450.00
Balance to mortgage	$16,500.00
Plus closing costs paid in Cash . . . . . which included "escrow" funds	$619.05

This was a conventional mortgage as distinguished from an FHA or VA mortgage. (See, 12 USC 1461, et seq.; 12 USC 1701, et seq. "National Housing Act", Federal statutory provisions under "Banks and Banking")

The "Loan Settlement Statement" itemized the monthly payments as follows:

Principal and Interest	$103.81
Tax Escrow	22.25
Insurance Escrow	4.00
MGIC (Mortgage Guaranty Insurance Corporation) escrow	3.44
	$133.50

The mortgagee-Metro has claimed that they are bound by federal regulations (Title 12, Code of Federal Regulations (CFR) 545.6-1 et seq.) to require "escrow" on all home mortgages granted, and that they are "bound to do nothing" with the "escrow" funds collected, which, also, they admit they invest said "escrow" funds realizing a gross profit on same, in self-dealing.

During the 56-month period of this mortgage (prior to foreclosure) mortgagor-Cramer conscientiously and diligently performed her covenant and paid "escrow" sums each and every month without fail, together with principal and interest on the mortgage note. She maintained an exemplary payment record. (See Complaint, Preamble, Appendix Volume I, pages 21a, 23a, et seq.)

From time to time, mortgagee-Metro required "excessive" escrow which mortgagor-Cramer disputed, recalculated and paid to said mortgagee. In the interim, mortgagee-Metro continually and consistently failed and refused to furnish mortgagor-Cramer with receipts or copies of receipts to account for and substantiate their so-called "requirements" for escrow. Mortgagor-Cramer never saw a tax bill or an insurance billing in her name as title-holder of the real property, prior to the foreclosure. Mortgagee-Metropolitan obtained these billings from the taxing authorities and insurance companies, directly, and mortgagor-Cramer was denied access to said billings, both before and after payment with her "escrow" funds, a denial of due process and in repugnance to the 14th Amendment to the U. S. Const. See, Longyear v Toolan, 209 US 414 (1908) 28 S Ct 506.

The annual statements as to this mortgage loan, as required of a mortgagee to furnish, were either/and/or illegible, not itemized, late in reaching mortgagor (for income tax purposes), omitted entirely, or with errors.

Further, mortgagee-Metro had been consistently late in paying mortgagor-Cramer's liabilities of taxes and/or insurance allowing said items to become seriously delinquent jeopardizing the security of "Cramer's" property, while collecting "escrow" funds each and every month which "cramer" paid without fail according to the aggregate sums required by mortgagee and shown on the installment-payment-cards as furnished by said mortgagee-Metro. Mortgagor-Cramer also paid additional amounts into the "escrow" account after disputing the "excessive" sums required by mortgagee-Metro.

After the 56-month period aforementioned,

mortgagor-Cramer complained to the several officers of Metropolitan Federal Savings and Loan that her "escrow" moneys were being mishandled and that she should be permitted to pay her own obligations and liabilities of taxes and insurance with her own money, instead of paying "escrow" funds to the said mortgagee; that they had failed to pay said taxes and/or insurance when due, that their bookkeeping was absent of talents in simple arithmetic, and that their "escrow" requirements were miscomputed in "excessive" amounts (called "cushioning" in the industry) by trickery in their estimating-method.

Where mortgagor-Cramer had paid considerably ahead of her repayment schedule, together with "escrow" funds, the mortgagee-Metro had complete and sole control of the allocation of the aggregate amounts as to principal, interest and "escrow".

While waiting for the mortgagee-Metro's reply to her request, and mortgagor-Cramer's

current singular installment payment due for May 15th (1968) was not paid on May 15th, the mortgagee-Metro initiated foreclosure proceedings on/or about May 16th, by advertisement (MCLA 600.3201 et seq., MSA 27A.3201 et seq.) without prior demand or notice. The first insertion of publication occurred on May 23 in the Detroit Legal News, entitled "Notice of Mortgage Sale," alleging "default" and "moneys secured" owing in the amount of $12,519.37. (The actual principal balance owing was $12,041.91, less the credit balance amounts in "escrow" which were mortgagor-Cramer's own funds.)

On May 29th (without knowledge of said publication of mortgage sale) mortgagor-Cramer paid the May 15th installment of principal and interest (within the 15-day forebearance or waiver period of the mortgage note) but which mortgagee-Metro later refused to credit on mortgagor's

loan "on account of the foreclosure", but never returned said check to mortgagor-Cramer.

The posting of the "Notice of Mortgage Sale" was made on May 31 which mortgagor-Cramer found tacked on her premises on June 1, contravening the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq., for the reason that mortgagor-Cramer was not in default of the terms of the mortgage note, a separate instrument divisible from the so-called "escrow" clause of the mortgage covenant and agreement. The May 29th payment made during the unretractible waiver or forbearance period of 15 days, was the first in the history of said mortgage period of 56 months which did not include "escrow" funds, and was in the amount of $103.81.

At the time of the initiated foreclosure action, there was a surplus credit balance in mortgagor-Cramer's "escrow" account.

There was no deficiency. No taxes or insurances were assessed, billed, due or unpaid. Nothing was due and nothing was unpaid. The total dollar amount of $12,519.37 appearing in the May 23rd "Notice of Mortgage Sale" publication, and in subsequent publications, is herein itemized as follows:

Principal debt secured		$12,041.91
Interest 1 month & 8 days		76.43
Escrow credit surplus	$32.92	
Escrow for future taxes & insurance	433.95	
Difference required for "escrow"		401.03
		$12,519.37

The last payment, currently and timely paid by mortgagor-Cramer, and accepted by mortgagee-Metro, immediately prior to the initiation of the foreclosure, was allocated by mortgagee-Metro as follows:

April 26th -	Principal & Interest	$103.81
	Escrow	82.19
		$186.00
	Additional principal	10.17
		$196.17

Further, the said publication of the mortgage sale contravened MSA 23.540 (378),

CL 1948, 489.778, under Title 23--Banking and Private Finance, Savings and Loan Associations, specifying "Whenever a borrowing member is in arrears in the payment of principal or interest for 2 months or more, the board of directors may declare the loan in default and the whole amount of the loan due and payable * * * ." In the instant case, mortgagor-Cramer's installment payments were all currently paid through and including May 14th when the publication "Notice of Mortgage Sale" first insertion occurred on May 23rd, in violation of (Michigan) MSA 23.540 (378); CL 1948, 489.778.

Further, mortgagee-Metro refused to credit mortgagor-Cramer's timely payments made for May, June and July, for principal and interest, and returned the June and July checks to mortgagor, but not the check for May, saying in their letter, no moneys are acceptable "on account of the foreclosure."

The next tax billing, in July, was $101.33 for city taxes which mortgagor-Cramer paid directly in July (when due). The hazard insurance was paid in advance through the next year until July 29. The county taxes were not due until the following December (about 7 months after the initiation of the foreclosure on "escrow funds only, and accelerating the debt.

By the "excessive" demands of the mortgagee-Metro for "escrow" funds, the following would have resulted if mortgagor-Cramer had paid the "excessive" escrow required by mortgagee, and for which they foreclosed the mortgage loan:

Credit balance in "escrow"		$ 32.92
Escrow required as of May 10th (by telephone)	$433.95	
Difference required for "escrow"		401.03
		$ 433.95
May through December, "escrow" estimate for monthly installment, 8 months @ $82.19 per mo.		657.52
		$1,091.47
Obligations to be paid current year from escrow":		
July, City Taxes	$101.33	
Aug, MGIC Ins.	30.10	
Dec, County Taxes	491.09	622.52

Excessive "escrow" required by foreclosure proceedings on May 23. $ 468.95

Further, the mortgagee claims that only the mortgagor executed the mortgage; that a mortgagee does not execute the mortgage; and that the mortgagee is "bound to do nothing with the "escrow" amounts collected" from mortgagors. The morgagee does not covenant or promise anything under the mortgage document. This gives rise to the scope of a defense of illegality under the Sherman and Clayton Act, 15 USCA 1 and 2, et seq., (sections 1-7 and 12-27), for the reason that this is a mass mortgage contract in wide-spread use throughout the entire United States. (See, Contract and Note, Appendix BB and CC herein.) In fact, it is unlikely that a mortgage loan may be obtained unless the mortgagor agrees to the "condition precendent" of paying the "escrow" as mandated by the mortgagee.

When the mortgagee-Metro refused to

accept and/or credit mortgagor-Cramer with her timely and current payments of May, June and July (for principal and interest) after publishing the "Notice of Mortgage Sale" commencing May 23rd, prior to the sale date of August 20th specified in said publication, on August 12, 1968, "mortgagor-Cramer" in propria persona, filed a Complaint, with summons issued, in the Wayne County Circuit Court, Case No. 115-792, and obtained an Order To Show Cause With Temporary Restraining Order enjoining the mortgagee-Metropolitan from pursuing the foreclosure action. The defendants-Metropolitan and their officers were served on said date of August 12th. MCLA 600.3208; MSA 27A.3208 required publication for a specified 12 successive weeks. The twelfth week ended on August 15th. Where the defendants-mortgagee were served on August 12th and enjoined, this meant that the publication was in effect for less than the 12

successive weeks required by statute. The temporary enjoining Order had to count for something, and the defendants-mortgagee did not comply with statutory provisions as to the Foreclosure by Advertisement.

The first court hearing was scheduled for August 16, 1968, on the Order to Show Cause with Temporary Restraining Order, and Why a Preliminary Injunctive Order should not issue. The Wayne County Circuit Court, Thomas J. Murphy, J., on said date of August 16th (where both parties had appeared for said hearing) would not allow mortgagor-Cramer to proceed without a lawyer. Said judge yelled at "Cramer" to hire a lawyer, setting a continuance hearing-date to August 23, 1968. On August 20th "Cramer" hired attorney-Abel Selburn, and on August 23rd there was no hearing, but said Judge Murphy requested attorney-Abel Selburn to go to the Metropolitan offices to "audit" their books, and the hearing was reset for September 6, 1968. On Sat-

urday morning, August 24, 1968, beginning at approximately 9:00 A.M., "Cramer" and attorney-Selburn were at Metropolitan's offices, where for approximately 2 hours attorney-Selburn drank coffee, was given a tour through the Metropolitan offices, admired their equipment, talked to one John C. Denyer who handed to attorney-Selburn an adding-machine-tape about six (6) inches in length consisting of unexplained figures, and attorney-Selburn and "Cramer" left Metro's offices. No books and no accounts were requested by attorney-Selburn; none were produced or offered. "Cramer" has been a bookkeeper-accountant for approximately 40 years, (she is 61 years of age now) and she is and wal well acquainted with all procedures for a proper "audit."

At the hearing on September 6th, only John C. Denyer (for Metro) was permitted to testify. No exhibits and no identifications were presented and/or none were entered into the hearing record. The balance of the

hearing consisted of colloquy of the two (2) lawyers and with the said Judge (Murphy) scrambling over some unidentified figures. The Court would not permit "Cramer" to present her figures as to the mortgage-loan account, saying "I don't want to hear anymore about it. The injunction may be dismissed and they can proceed with the foreclosure."

On September 23, 1968 the attorney (Michael Doelle) for Metropolitan mailed a notice and the proposed "Order Dissolving Temporary Restraining Order" to attorney-Selburn, setting the date for entry of said Order on September 27, 1968 (without "Cramer's" knowledge). Attorney-Selburn did not show up in court for said entry of said Order, unknown to Cramer at the time, and no proof of service was filed. A Sheriff's sale of said property was held on October 1, 1968, three (3) days after the entry of said Order of September 27th,

contravening numerous statutes, among which, in violation of MCLA 600.3105; MSA 27A.3105; which required "after a judgment has been rendered * * * no separate proceeding shall be had for the recovery of the debt secured by the mortgage, or any part of it, unless authorized by the court." The Order of September 27, 1968, did not authorize any Sheriff's sale to take place on October 1, 1968, or any date or time. Further, where the attorneys for Metropolitan claimed the Order of September 27th to be an "adjudication" of default in her mortgage, the sale of said realty contravened MCLA 600.6052 (1) and (2); MSA 27A.6052 et seq., requiring that notices be displayed in 3 public places where the real estate is to be sold at least 6 weeks prior to the sale, and notices posted in 3 public places in the township or city in which the premises are located; with copy of said notice published once each week for 6 successive weeks prior

to the sale. There are not 6 weeks (and never will be) in between September 27 and October 1. No notices were posted. The Sheriff's sale of October 1, 1968, was unauthorized and in violation of the "judgment" entered on September 27, 1968. Alternatively, the so-called "judgment" as a finding of default in the mortgage, dated September 27, 1968, should be vacated, voided or nullified as false, and fraudulently obtained, and where State action is involved, in the ab sence of a due process hearing where no identifications were submitted at the one and only hearing of September 6th, prior to the entry of said "judgment" of September 27, 1968, and no evidence was submitted to support or substantiate a so-called alleged "deficiency" and/or a "default" in the mortgage. Neither attorney-Selburn and/or attorney-Counard, whom Cramer hired, sought any remedy and/or to vacate, void or annul the fraudulently obtained and executed Order of September 27, 1968, and which said

Sheriff's sale of October 1, 1968, constituted a fraudulent sale of "Cramer's" property. There is no time limit on attacking a void or voidable Order.

The above matters "Cramer" became aware ot, among many other irregularites, after the rendering of the Michigan Supreme Court decision of October 6, 1977, where it specifically states: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." (emphasis added) See, Cramer v Metropolitan Savings and Loan, et al, 401 Mich 252, at Appendix AA herein.

In the interim, where attorney-Selburn required "Cramer" to make several intermittant trips to his office to pay him more money, and also attorney-Selburn had furnished copies of pleadings to "Cramer" which he claimed he had prepared and filed in the Court records, subsequently, in about March 1970 "Cramer" examined the court file and

and found no pleadings filed by attorney-Selburn, and she determined also that the defendants-Metropolitan were never served with any pleadings as prepared by attorney-Selburn. (Also, in the interim, "Cramer" redeemed her property from the fraudulent Sheriff's sale of October 1, 1968, on June 5, 1969, after great difficulty, to save her property. At that time the increased market-value was about $35,000.00; "Cramer" had made considerable improvements on said property from the time of purchase.)

Attorney-Selburn had abandoned the case in fraud of his client-Cramer.

Then, "Cramer" fired attorney-Selburn (about March 1970) and further, filed more pleadings, in pro per, in the Wayne County Circuit Court, among which was a motion for leave to amend Complaint, and the Defendants-Metropolitan were served. The successor Judge (Edward F. Bell), where Judge Murphy was now deceased, would not permit "Cramer"

to file her Second Amended Complaint, and forced her to hire another lawyer. In about April or May 1970, "Cramer" hired attorney-Allen Counard, who also motioned the court for leave to file Second Amended Complaint, which was denied; Defendants-Metropolitan were granted a Summary Judgment dismissing the matter on the grounds of "res judicata," based upon the Order entered by Thomas J. Murphy, J., as a finding of default in the mortgage. (and where "Cramer" was not permitted to be heard.)

Attorney-Allen Counard took the matter on appeal, in the Michigan Court of Appeals, but ignoring the Order of September 27th signed by Judge Murphy, where the case is reported at 34 Mich App 638, and the appellate court said "Mrs. Cramer's evidence was not heard." and reversing "res judicata" and remanding to the Wayne Circuit Court.

However, subsequently, attorney-Allen

Counard continued to ignore the Order dated September 27, 1968 and which the defendants-Metropolitan's attorneys still claimed "res judicata" on the basis of said Order as a "finding of default" in her mortgage.

Attorney-Allen Counard continued managing the case (on behalf of "Cramer" ??) for approximately a two-year period, and always continued to ignore the Order of Sept. 27th which was fraudulently obtained by the defendant-attorneys for Metropolitan. Attorney-Allen Counard had prepared and filed a Second Amended Complaint consisting of 6 counts against mortgagee-Metropolitan, to wit:

I - Breach of Contract
II - Abuse of Process
III - Libel and Slander
IV - Breach of Fiduciary Relationship
V - Invasion of Privacy
VI - Intentional Infliction of Emotional Distress

In about August 1971, attorney-Counard filed a ready for pre-trial certificate, and subsequently also filed a Motion to Strike defendants affirmative defenses as

to "adjudged in default in her mortgage," among other things, pertaining to said pre-trial matters. The Court (still another Judge, Benjamin Burdick) granted the motion, striking the word "adjudged" from defendants affirmative defenses in their pre-trial statement. In October 1971, the Court issued its Summary of Pre-trial Conference, saying, in part: "This is a suit to set aside a foreclosure." and "settlement seems impossible at this time."

In about February 1972, attorney-Counard filed a motion for summary judgment (on behalf of client-Cramer) and where there was no cross motion by the defendants-Metropolitan, the court granted the summary judgment of dismissal to the defendants-Metropolitan, dismissing all six (6) counts of plaintiff-Cramer's complaint, as prepared by Attorney-Counard.

In about March 1972, "Cramer" fired

attorney-Counard, and subsequently, she lodged the second appeal, in pro per, in the Michigan Court of Appeals where the said court rendered an unpublished opinion, in May 1973, affirming dismissal of all but Count IV (Breach of Fiduciary Duty) of plaintiff-Cramer's Complaint, as prepared by attorney-Counard.

In the interim, "Cramer" had paid the referral fee to the Detroit Bar Association and where they kept "Cramer's" name on file for a period of about two years attempting to find an attorney to represent "Cramer" in this matter. In 1974, the Detroit Bar Association wrote "Cramer" a letter saying they were "unable to find an attorney" to handle her legal matters.

In August of 1973, Wayne Circuit Court Judge John R. Kirwan, presiding, a jury trial was held on Count IV only, where "Cramer" representing herself, was prohibited from mentioning the very word "foreclosure" and anything related, remotely

or otherwise, as to the "foreclosure." The jury found Defendants-Metropolitan "not guilty" and a judgment of "no cause of action" was entered by the court in Sept. 1973.

Proceeding in propria persona, "Cramer" lodged the third appeal in the Michigan Court of Appeals, who again rendered an unpublished opinion in June 1975, affirming the lower court.

Then, "Cramer" timely made application to the Michigan Supreme Court for leave to appeal, which was granted, and subsequently, the Michigan Supreme Court rendered its decision (based upon false facts), dated October 6, 1977, and reported at 401 Mich 252. Two rehearings were denied.

(Petitioner-Cramer incorporates by reference herein her previous Petition for Writ of Certiorari timely filed in the United States Supreme Court on April 27, 1978, Docket No. 77-1558, which was denied on June 12, 1978.)

On July 14, 1978, "Cramer" commenced a new action on this matter in the Wayne County Circuit Court, and taking it on appeal to the Michigan Supreme Court seeking reversal, voiding or correcting that court's decision of October 6, 1977, reported at 401 Mich 252, on the basis of fraud having been perpetrated upon the court. The court denied "Cramer's" application for leave to appeal, denied subsequent motions for reconsideration and the last Order issued by the Michigan Supreme Court (for establishing jurisdiction) is dated April 3, 1980.

In the interim, on July 17, 1979, "Cramer" sought "removal" of the entire State case in the Federal District Court, claiming factually to be "the defendant" in a wrongful foreclosure which was initiated by "Plaintiff-mortgagee" who utilized the Foreclosure by Advertisement" statute as a hostile process on their federal cause of action that they are required by federal regulations

to require "escrow," and that "Cramer" was denied a choice of forum, in defense of the wrongful foreclosure action. Also, simultaneously, "Cramer" filed an "original" proceedings Complaint for Declaratory Judgment, among other matters, and adding indispensable parties to the suit, among which, the first and third attorney "Cramer" had hired, the Federal Home Loan Bank Board and the members of the Michigan Supreme Court. "Cramer" also sought injunctive relief against the Michigan Supreme Court as to their condoning fraud, among other things.

Pleadings (mostly unresponsive) were filed by all of the defendants and co-defendants in the federal court action, on jurisdictional issues. On January 17, 1980, the Federal District Court issued its "Order of Dismissal In Part and Order of Remand In Part" without opinion. (See, Petitioner's Appendix, Volume I and II, filed herein.)

Proceeding timely, in propria persona, (for the reasons that she cannot find an honest and competent lawyer or attorney, even though she has adequate funds to pay for same, to handle this case) "Cramer" then filed her Notice of Appeal in the United States Court of Appeals, Sixth Circuit, where on two separate motions to dismiss (by the Federal Home Loan Bank Board and by the attorneys for Co-Defendant-Allen Counard) that court issued its Order dated May 5, 1980, without opinion, cutting off litigation, and contravening Federal Rales of Appellate Procedure, Rules 26(a) and (c), in total violation of its Local Rules of the Sixth Circuit, Rules 8 and 9, and where a motion to affirm is not permitted, and prior to the date of May 20, 1980, where by extended time granted Appellant-Cramer was to have been permitted to file her brief on appeal in the said United States Court of Appeals, Sixth Circuit, and

having been disallowed subsequently to file her brief, in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

The Michigan State courts, the Federal District Court and the United States Court of Appeals, Sixth Circuit, have no eyes to see and no ears to hear. The members of the Michigan Supreme Court are mentally disabled to render decisions, as exemplified in that reported at 401 Mich 252, where, in fact, they have decided that a foreclosure on real property is permitted on "escrow" funds with which the mortgagee is "bound to do nothing." Further, the Michigan Supreme Court considered only partial of two (2) paragraphs of the mortgage covenant and agreement, ignoring the other paragraphs and ignoring the mortgage note terms, in violation of the cardinal rule where the entire mortgage covenant and agreement must be considered to arrive at a proper interpretation of same.

When the mortgage contract is read in its entirety, it prohibits, inhibits, restricts, prevents, and precludes a mortgagor from complying with governmental laws such as paying taxes and insurances to protect the security of the real property mortgaged, while requiring the said mortgagor to pay "escrow" moneys to the mortgagee who is "bound to do nothing" with the said "escrow" moneys so collected.

"Cramer" wanted to pay her own liabilities of taxes, insurance and other assessments which may have become due on said real property, and for the main reason (among others) that the mortgagee was failing and neglecting to pay these liabilities when due, jeopardizing the security of "Cramer's" property, and allowing said taxes and insurance to become seriously delinquent.

By the mortgagee-Metropolitan utilizing the Foreclosure by Advertisement proceedings, and where other lending institutions, generally, by their policy, will not pick-up

on another's foreclosure, it certainly appears that lending institutions through their attorneys have a conspiratorial-racket going on so that mortgagor's are boxed-in with the likelihood that the said mortgagor will lose the property. Attorney-Selburn, whom "Cramer" hired, whom "Cramer" was forced to hire when the Court would not permit "Cramer" to proceed without a lawyer initially, did absolutely nothing to prevent the wrongful foreclosure, although there were many and various remedies which could have been sought to protect "Cramer's" interests, where the attorneys for Metro-politan flagrantly violated various statutory provisions (which "Cramer" became aware of only after the Michigan Supreme Court decision rendered dated October 6, 1977). Attorney-Selburn simply sat back and did nothing expecting "Cramer" to lose her property where it appeared that she would not be able to redeem from the Sheriff's sale.

This conspiratorial-racket is further enhanced, for the benefit of the attorneys where apparently they work together with the lending institution-attorneys, and by the misconduct, negligence, malpractice, fraud, concealment and deceit of the attorney whom the mortgagor hires, the plain and simple possibility and probability is that the attorney will cause the mortgagor to lose the property.

Then, the next attorney whom "Cramer" hired, attorney-Allen Counard vœered-up and concealed the misconduct, malpractice, negligence and fraud and deceit of attorney-Selburn. Attorney-Counard sought no remedy to properly remove the so-called "adjudication of default" which the attorneys for defendants-Metropolitan still claim to be "res judicata".

Subsequently, the third attorney (McFadden) whom "Cramer" hired, was ready, willing and able to cover-up for the negligence, misconduct, malpractice, fraud, concealment and

deceit of the previous two attorneys. Underneath the cool and calm exterior of a lawyer is a poisonous snake ready to exploit and victimize his own client. Lawyer's in private practice are by no means guardians of the people's rights, and the opposite is true since they work together with their colleagues where all that matters is the color of money for the attorneys' pockets. Often, the clients on both sides get ripped-off by their own attorneys; and, sometimes, even the just may be a participant in the attorneys' rackets. It appears there is no adversary system of law when the attorneys on both sides pocket their winnings, while the clients on both sides are the losers. The lawyers, generally speaking, are just plain dishonest. They work their schemes, strategy (or strategem), rackets and angles, victimizing and exploiting their own clients to the lawyers' advantages. The client hasn't got a chance to avoid the exploita-

tion and victimization.

In retrospect, in this instant case, when the judges forced "Cramer" to hire a lawyer (or lawyers) it was equivalent to pushing her into a snake-pit.

"Cramer" herein does not even pretend to have the knowledge and expertise of a lawyer, which is obvious, but it appears to her that if the mortgagee-Metropolitan had voluntarily adhered to the proper tuiliza-tion of the mortgagor's "escrow " funds there would have been no foreclosure and "Cramer" would not have had to seek any remedy from the courts, and therefrom "Cramer" would not have been forced to hire lawyers, and therefrom there would not have been the importance of the constitutional question involved, under the provisions and limitations of the Fourteenth Amendment to the United States Constitution. The Federal question arises as to the State's enforcement of the restrictive covenant, where the State has put its sanction behind

the covenant, and has to that extent punished "Cramer" for wanting to pay her own liabilities of taxes and insurances where mortgagee-Metropolitan was failing and neglecting to do so with the "escrow" moneys collected.

Petitioner-Cramer has never had a day in court to prove that there was no basis for the foreclosure, a denial of due process and equal protection of the law, in violation of the Fourteenth Amendment to the United States Constitution.

* * * * *

POINT I

In determining whether there is a significantly or sufficiently close nexus between the State and the challenged action of a foreclosure based upon "escrow" moneys solely, presents questions relating to the validity of the enforcement of a private agreement (a mass mortgage contract) which

has for its purpose and intent a monopolizing as to the collection of said "escrow" moneys impliedly, but unenforceable, for the payment of taxes, insurance and other assessments which may become due on said real property mortgaged. The mortgage contract, when read in its entirety, restricts, prohibits, inhibits, precludes and/or prevents a mortgagor from paying her own liabilities with her own money, Further, the mortgagee (banking and/or lending institution) does not signe the contract. Only the mortgagor signs. The mortgagee who requires the "escrow" moneys claims they are "bound to do nothing" with said "escrow" funds, and by investing the same realizes a gross profit.

The Michigan Supreme Court rendered its decision (reported at 401 Mich 252) which enforces the payment of said "escrow" moneys, or that the mortgagor is to suffer punishment by foreclosure and loss of the property and equity in said property, inflicted by

the interpretation of the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq., by judicial officers in their official capacities.

In the instant case, all the mortgagor wanted was to pay her own taxes and insurance to be secure in that knowledge that her own liabilities would be met promptly, because the mortgagee had failed and neglected, repeatedly, to pay taxes and/or insurance on said mortgaged property with the "escrow" moneys as deposited by the mortgagor. Further, mortgagee refused to furnish receipts and/or to properly account for any or all disburse-ments of said mortgagor's "escrow" moneys.

Where the instant mass mortgage contract is a restrictive covenant, and between private parties as mortgagor and mortgagee, an analagous situation in the application of common-law rules is enunciated by this

U. S. Supreme Court in Shelley v Kraemer (1948) 334 US 1, 63 S Ct 836, where the court held that the "action of state courts and of judicial officers in their official capacities is to be regarded as action of the state within the Fourteenth Amendment" and that by enforceing the restrictive agreements, the States deny the equal protection of the law and that, therefore, the action of the state courts cannot stand.

POINT II

The terms of the mortgage (promissory) note allowed for a 15-day forbearance or waiver period for the current monthly install-ment of principal and interest. Petitioner's (mortgagor-Cramer's) May 15th payment was made on May 29th, within the said 15-day period where the mortgagee had elected the option of "After the 30th add late charge" as imprinted on each and every monthly installment payment card (as furnished by mortgagee to mortgagor-Cramer).

However, in hostile retaliation to mortgagor's request that she be permitted to pay her own obligations for taxes and insurance rather than in "escrow" for mortgagee to mishandle, the mortgagee-Metropolitan Federal Savings and Loan Association initiated foreclosure proceedings on/or about May 16th where the first insertion of publication appeared in the Detroit Legal News on May 23rd, and said mortgagee refused to credit mortgagor's current May 15th payment made on May 29th, "on account of the foreclosure." Mortgagor-Cramer also had objected to and disputed the "excessive escrow" required by said mortgagee, which during the 12-month period would have resulted in almost double the amounts needed to pay the current annual liabilities of taxes and insurance on the said real property mortgaged. The said 15-day forbearance period, where the said mortgagee had agreed that no penalty or no late charge would be applicable, is an intentional relinquishment of any act

by the mortgagee, elected by the mortgagee, or a waiver. The federal courts have held that the partaking of the principle of an election of the waiver needs no consideration and cannot be retracted. American Locomotive Co v Chemical Research Corp., 1949, 171 F2d 115, cert den 69 S Ct 515, 336 US 909, 93 L Ed 1074; American Locomotive Co v Gyron Process Co., 69 S Ct 515, 336 US 909, 93 L Ed 1074.

POINT III

The mortgagee-Metropolitan Savings and Loan Association assert they are "bound to do nothing" with the "escrow" moneys they require as terms and conditions of the mortgage-loan on real property purchased by mortgagors. This Court has said that "the illegal character of the agreement is founded, not alone upon the fact that it tends to lessen competition, but also upon the fact of the commission of a fraud * * * in combining their interests and concealing

the same, * * * " McMullen v Hoffman, 174 U.S. 639. (1899) 43 L Ed 1117, 19 S Ct 839, where the authorities are reviewed and the whole subject carefully examined, the court said, "The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract," citing many English and American Cases. "The court refuses to enforce such a contract, and it permits defendant to set up its illegality, not out of any regard for the defendant who sets it up, but only on account of the public interest. * * * and it is only allowed for public considerations and in order the better to secure the public against dishonest transactions. To refuse to grant either party to an illegal contract judicial aid for the enforcement of his alleged rights under it temds strongly toward reducing the number of such transactions to a minimum. * * * "

In some form or another, where the

mortgagee-Metropolitan asserts "we did not sign the contract. We are bound to do nothing" with the "escrow" moneys required by said mortgagee, the real nature of the transaction is disguised. In the leading case on Monopolies, Continental Wall Paper Company v Louis Voight & Sons Company, 212 US 227, (1909) 29 S Ct 29 S Ct 280, in Justice Holmes dissenting opinion (with three other justices concurring) in speaking of persons being compelled to pay that which is unreasonable in order to get what is needed, is the going to an act in furtherance of the unlawful purpose of the trust, "But that knowledge makes no difference, because the policy of not furthering the purposes of the trust is less important than the policy of preventing people from getting other people's property for nothing * * * . (emphasis added) Courts and legislation sometimes have recognized that the so-called freedom to contract or not may be

made illusory by the economic situation of one of the parties." Citing: Schlemmer v Buffalo, R. & P.R.Co., 205 US 1, 12, 51 L. ed 681, 686, 27 Sup Ct. Rep. 407.

On the other hand, in the instance of a unilateral restrictive covenant, in which the mortgagor has been coerced into as a "condition precedent" to obtaining the mortgage loan (and which is occurring by volume, overwhelmingly, in the modern-day mortgage marketing by banks and thrift lending institutions, which enables persons of moderate means to purchase and own property) there must be some common-sense remedy afforded by the courts to the mortgagor in guarding against the unscrupulousness of the mortgagee's long-term demands and unreasonableness, whereby a mortgagor would be permitted to protect herself against the unscrupulousness of the mortgagee, without being damaged by the foreclosure sanctioned by the court, or

perhaps even to the point of forfeiture of her property where redemption might not have been possible. Generally, one lending institution will not pick-up on another's foreclosure, which squeezes the mortgagor into a corner, at the mercy of the unscrupulous-Simon-Legree-mortgagee who is also failing and neglecting to utilize the said "escrow" moneys for the purposes intended, and is profitting by self-dealing with other people's money (the morgagor's "escrow" funds) where the mortgagor get nothing. In Shelley v Kraemer, supra, it was not the covenants which the court struck down but judicial enforcement of them, and that such judicial sction of enforcement was state action and constituted a denial of "equal protection," contravening the Fourteenth Amendment. Barrows v Jackson, 346 US 249.

POINT IV

By statutory provisions of the Michigan

Foreclosure by Advertisement procedures, the mortgagee is held to strict compliance. (But, who will take issue with or challange whether the mortgagee complied with statutory provisions? The lawyers this mortgagor hired didn't and wouldn't. What was their motive for purposely being negligent?) Primarily, the courts have held that there would be little or no reason for a foreclosure unless there was a "default in the indebtedness." In the instant case, there was no default in the indebtedness. The mortgagee utilized the foreclosure by advertisement in the May, in a current-month's payment period, to foreclose on "escrow" moneys, and in an excessive amount, $401.03, which could not have been properly utilized by the mortgagee until at least two (2) months later, in July, when $101.33 was assessed and billed for taxes. Nothing else was due or unpaid. (Mortgagor-Cramer paid the said July taxes of $101.33 direct-

ly, after the foreclosure was initiated by the mortgagee. Cramer's diligence and conscientiousness in paying her own taxes infuriated the mortgagee-Metropolitan people even more, and to the extent where they prevented her from paying her own taxes in December by obtaining the billing from the taxing authorities, Then, the taxing authorities would not permit Cramer to pay her own taxes, directly, because she could not produce the billing for same.)

In August, by commencing a suit in the Wayne County Circuit Court, "Cramer" obtained an "Order to Show Cause Why a Preliminary Injunction Should not Issue, With Temporary Restraining Order," and the defendants-Metropolitan were served on August 12th, which disrupted the required 12 successive weeks of publications required by Michigan statutory provisions spelled out in MCLA 600.3208; MSA 27A.3208. The temporary enjoining Order had to count for something, and where a full 84 days was required

for an effective 12 successive weeks of publication, the publication was effective for only 81 days, in contravention of statutory provisions.

Further, on September 27th, by the court dissolving the temporary restraining order and the defendants-mortgagee effecting the Sheriff's Sale on October 1st (3 days later) the Sheriff's Sale was in violation of MCLA 600.3105; MSA 27A.3105 which required "after a judgment has been rendered * * * no separate proceeding shall be had for the recovery of the debt secured by the mortgage, or any part of it, unless authorized by the court." The dissolution of the temporary restraining order, which the attorneys for defendants-Mortgagee assert was an "adjudication" of the court did not authorize any Sheriff's Sale or any other separate proceeding for the recovery of the debt secured. Further, the Sheriff's Sale of said realty contravened MCLA 600.

6052 (1) and (2); MSA 27A.6052 et seq., requiring that notices be displayed in 3 public places where the real estate is to be sold at least 6 weeks prior to the sale, and notices posted in 3 public places in the township or city in which the premises are located; with copy of said notice published once each week for 6 successive weeks prior to the sale. There are not 6 weeks (and never will be) in between September 27th and October 1st. No notices were posted. The Sheriff's Sale of October 1st, was unauthorized and in violation of the "judgment" entered on September 27th, and contravening statutory requirements and provisions.

The Sheriff's Sale of October 1st was held in rughless violation of specific statutory requirements, in contravention of the provisions and limitations of the Fourteenth Amendment to the United States Constitution. The Sheriff's Sale was illegal, and should be vacated or voided. Further,

the redemption through the Register of Deeds Office was illegal and should be vacated, voided, annulled, or corrected, being in specific violation of MCLA 600.3105; MSA 27A.3105 for the reason that the court did not authorize any separate proceeding for the recovery of the debt secured by the mortgage, or any part of it. (The lawyer I hired when I was forced to hire a lawyer, was a co-conspirator; I was supposed to lose my property, for the vulture-lawyers to benefit by.)

POINT V

At the first hearing on the "Order to Show Cause" on August 16th, the Court yelled at "Cramer" to hire a lawyer, and would not allow her to proceed unless she hired a lawyer. The Court set a continuance hearing-date of August 23rd. Frightened by the manner and conduct of the Judge, "Cramer" hired crooked-attorney-Abel Selburn, and where there was no hearing on August 23rd, the court set another continuance hearing-

date of September 6th, while in the interim attorney-Abel Selburn was to "audit" the Metropolitan books as to the foreclosure on "Cramer's" property. There was no such "Audit", no books were requested or produced; no records by Metropolitan were offered and attorney-Selburn requested none; then, attorney-Selburn was given only an adding-machine-tape, about 6 inches in length, with unidentified and unidentifiable figures on it.

The one and only hearing on September 6th, where only John C. Denyer for defendant-Metro was permitted to testify, and the colloquy of two lawyers and the judge scrambling, orally, over some figures, and where no records, no exhibits, no identifications were entered into the court record, the Judge (Thomas J. Murphy) said "go ahead with the foreclosure." Mrs. Cramer's evidence was not heard. 34 Mich App 638. "Cramer's" evidence has never been heard to date; never permitted to be heard. That is the reason for hiring a lawyer.

The lawyers "Cramer" hired, because of the insistence of the Court, took "Cramer's" money and engaged themselves in malpractice, fraud, concealment, deceit, and in camaraderie with the attorneys for defendants-Metropolitan, sought absolutely no remedy to prevent the wrongful foreclosure (1st attorney-Abel Selburn); sought absolutely no remedy to remove the fraudulently claimed adjudication of "default" in his mortgage, admitted to a "deficiency" when there was no deficiency in her "escrow" account (instead, there was a credit balance in escrow which the Sheriff's Bidding Statement showed as applied in reduction of the principal balance), failed and neglected to produce and/or take testimony in Court, on anything, including the Sheriff's Bidding Statement, asserted that the mortgage covenant was a "mutual covenant" with considerations flowing to the mortgagor (erroneously), among other things too numerous to mention, (2nd attorney-Allen Counard); and while the 2nd attor-

ney covered-up for the 1st attorney's malpractice, then the 3rd attorney-McFadden whom "Cramer" hired in February 1979 was obviously bent on pursuing a course of covering-up for the other two attorneys in holy malpractice, also asserting that the mortgage covenant is a "mutual covenant". These were all invidiously discriminatory practices, in conflict of interest, against "Cramer" as their client, and which caused the denial of due process of law, denial of equal protection of the laws, by obstructing justice in perversion of camaraderie, against their own client, and also for the reasons that lawyers do not want to suffer ostracizing by other lawyers.

In Faretta v California (Slip Opinion) 1975, No. 73-5772, On Writ of Certiorari to the Court of Appeals of California for the Second Appellate District, the U. S. Supreme Court reversed and vacated the judgment and remanded for further proceed-

ings on the grounds that Faretta was forced to accept against his will a state-appointed public defender and that the California courts deprived him (Faretta) of his constitutional right to conduct his own defense. The U. S. Supreme Court held that the Sixth Amendment (right to counsel) as made applicable to the States by the Fourteenth guarantees that a defendant in a state criminal trial has an independent constituional right of self-representation and that he may proceed without counsel.

The Michigan Constitution of 1963 (and priorly) provides a guaranteed right of self-representation, Article 1, Section 13. Michigan statutory provisions, MCLA 600.1430; MSA 27A.1430, provides that:

> "Every person of full age and sound mind, may prosecute or defend civil actions in any court by an attorney, or may, at his election, prosecute or defend civil actions in person. No person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case.
> P.A. 1961, No. 236, sec. 1430, eff. January 1, 1963.

Mr. Chief Justice Burger, with whom Justices Blackmun and Rehnquist joined, dissenting in Faretta v California, supra, commented "If there is any truth to the old proverb that "one who is his own lawyer has a fool for a client," the Court by its opinion * * * now bestows a constitutional right on one to make a fool of himself." However, the dissenters overlooked a more profound aspect of the horrendous, horrible, nightmarish experience in any litigation; that if one has the choice of what kind or degree of fool one may be by one's constitutional right, it is a far better choice to be one's own fool than being a fool by hiring a lawyer and being made a bigger fool of by the lawyer.

It hurts the litigant and/or client, plenty, whichever way you want to cut it. Financially, spiritually, psychologically, physically, etc. etc. See, A Sick Profession, 5 Tulsa L J 1 (Jan 1968) and where

Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

> "(1) the legal profession as a whole has very poor standing;
>
> (2) there are many causes for this, some of them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and
>
> (3) there is something we can and ought to do about this as the English bar and bench did a century ago.
>
> " * * * There is no single cause for what would be called the "bad image" of the legal profession. The total image is a stream into which many things are poured. The deportment and misconduct of some members of the bar pollute this stream and their bad manners contribute to the bad performance. * * * The title lawyers and real estate lawyers who engage in miscellaneous chicaneries to bilk home-owners are, of course, a large factor; and, with the enormous expansion in the building,

buying and selling of homes, thousands of Americans have been mistreated by this group and are properly resentful. * * * There are others. * * * "

"Cramer" herein offers her own old proverb: "The truth hurts, but the lies, malpractice, fraud and deceit of lawyers will kill you."

POINT VI

In the instant case, the "Order" of enforcement by foreclosure in the lower court was affirmed by the Michigan Supreme Court, reported at 401 Mich 252. The judicial action at every level of the State courts bears the clear and unmistakable imprimatur of the State. Only the mortgagor signs the covenant and agreement (the mass mortgage contract). The mortgagee does not sign the mortgage contract and asserts "we are bound to do nothing" with the "escrow" funds we require."

Therefore, the Michigan State courts have said, in effect, that the mortgagee may foreclose and accelerate the debt and for mortgagor's own moneys (in addition to the debt) when no taxes and no insurances are assessed, billed, due or unpaid, for mortgagee's self-dealing purposes, and the mortgagee is bound to do nothing with said mortgagor's "escrow" funds, and the mortgagee may take possession of the said real property when nothing is due and nothing is unpaid. The Michigan Supreme Court members are mentally disabled to render decisions.

In Shelley v Kraemer, supra, the court noted that "previous decisions of this court have established the proposition that judicial action is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common-law policy. * * * State action, as that phrase is

understoon for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms. And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the constitutional commands."

POINT VII

The seemingly insignificant 'federal regulations" mortgagee-lending institutions rely on, and which expands into an enormous power, is found under Title 12, Code of Federal Regulations, 545.601, et seq., as promulgated under the authority of the Federal Home Loan Bank Board, provisions of which are as follows:

545.6 Real Estate loans.

545.6-1 Lending powers. Any Federal association may make the following types of loans on the security of first liens on improved real estate:

(a) Home or combination of homes and business property --

(1) Monthly installment loans; flexible payment loans.

* * * up to 75 percent of the value thereof, repayable monthly within 30 years or, if an insured or guaranteed loan, within the period acceptable to the insuring or guaranteeing agency. Provided, That when so authorized by the memebers of such an association, such loans may be made up to:

(i) 80 percent of the value, if the loan is not an insured or guaranteed loan;

(ii) The maximum percentage of the value acceptable to the insuring agency, if an insured loan;

(iii) 80 percent of the value, plus the amount guaranteed if a guaranteed loan.

* * *

(4) Loans in excess of 80 percent of value. The limitation of 80 percent set forth in (a) (1) (i) of this section shall be 90 percent in the case of any loan meeting the following requirements:

* * *

(iii) The loan Contract requires that in addition to interest and principal payments on the loan, the equivalent of one-twelfth of the estimated annual taxes and assessments on the real estate security be paid monthly in advance to the association;

* * * "

(emphasis added)

Therefore, no "escrow" is required on any insured or guaranteed loan. "Escrow" is required on a loan 90 percent of value, if the loan is not an insured or guaranteed loan. See, Petitioner's Appendix, Volume II, pages 550a and 551a, Letter (Exhibit A) from the Federal Home Loan Bank Board, Office of General Counsel.

In the instant case, the mortgage-loan was a "conventional" type, not an FHA or VA loan.

If the mortgagee-Metropolitan Federal Savings and Loan Association had followed the above-shown provisions, no "escrow" was required in the instant case, being a conventional mortgage privately insured by Mortgage Guaranty Insurance Corp. (MGIC)

POINT VIII

The attorneys for defendants-Metropolitan Federal Savings and Loan, have consistently claimed that the Order dated Sept-

ember 27, 1968, as dissolving the temporary restraining order, and as a finding of "default" in her mortgage is "res judicata." No "default" was shown in the one and only hearing of September 6, 1968, preceding the entry of said "Order" of September 27, 1968, No exhibits, no identifications were submitted and/or entered into the record. "Cramer's evidence was not heard." 34 Mich App 638. The attorneys (Selburn and Counard) "Cramer" hired never sought the proper remedy or to even challenge the defendants-attorneys assertions of "default" in her mortgage.

"Cramer" contends that said "Order" of September 27th was fraudulently obtained. In Grummons v Zollinger, D.C. (1964) 240 F Supp 63, affirmed 341 F 2d 464, the federal court of appeals held, "Principle of res judicata may not be invoked to sustain fraud and judgment obtained by fraud, or collusion, may not be used as basis for application of doctrine."

As the record will show, "Cramer" was badly represented by the attorneys she was forced to hire in this matter. "Res judicata" is an affirmative defense and burden of proof is on the party asserting it." Howard v Green, C.A. Ark. 1977, 555 F2d 178.

POINT IX

The Federal district court erred in 'remanding" the sought removal of the entire State case to the Federal courts. Where the State case was pending in the Michigan Supreme Court (No. 62249) until April 3, 1980, the Wayne County Circuit Court had no jurisdiction on said "remand in part" as Ordered on January 17, 1980. A "remand" can be effected only to the State court from "whence it came," or from which it was removed pursuant to section 1443, and shall be reviewable by appeal or otherwise. 28 USC 1447 (d). In Huffman

et al v Pursue, Ltd., 420 US 592, this court said,

> " * * * assuming, arguendo, that litigants are entitled to a federal forum for resolution of all federal issues, that entitlement is most appropriately asserted by a state litigant when he seeks to relitigate a federal issue adversely determined in completed state court proceedings."

The federal issue, pertinent to the whole of the case is whether state action is involved, as to the "foreclosure", as to being forced to hire lawyers, etcetera. Petitioner-Cramer herein, further, relies on Mitchum v Foster, 407 US 225, where this Court said, "Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and law of the Nation. It is clear fro m the legislative debates surrounding passage of 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment

"against State action * * * whether that action be executive, legislative, or judicial." Ex parte Virginia, 100 US 339, 346 (emphasis added) Proponents of the legislation noted that state courts were being used to harass and injure individuals, either became the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights. * * * The very purpose of 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights - - to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative or judicial." Ex parte Virginia, 100 US, at 346.

Further, it is the established practice of the United States Supreme Court to sustain the jurisdiction of the federal courts to issue injunctions to protect

rights safeguarded by the Constitution, Philadelphia Co. v Stimson, 223 US 605; Hays v Seattle, 251 US 233; Pennoyer v McConnaughy, 140 US 1; City Railway Co v v Citizens Railroad Co., 166 US 557; City of Mitchell v Dakota Telephone Co., 246 US 396., and to restrain individual state officers from doing what the 14th Amendment forbids the State to do. Chicago, B & Q. R. Co. v Chicago, 166 US 226; see also Ex parte Virginia, 100 US 339.

"If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jursdiction." Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291.

Your Petitioner (Cramer) has never had a day in court to prove that there was no basis for the foreclosure. The defendants-Metropolitan utilized the foreclosure by

advertisement procedure as a hostile process prior to the one-monthly payment of principal and interest only, without the "escrow", in retaliation to Cramer's justifiable and warranted complaints against the mortgagee-Metropolitan. Then, subsequently, the attorneys adopted "she refused to pay escrow" as their strategem, to victimize her and to exploit her, and in perpetrating a fraud upon the court.

CONCLUSION

This Court should grant certiorari because of the importance of the issues arising under the Fourteenth Amendment, and the Order of dismissal of the action should be reversed and ordered remanded for trial on the merits and/or for consideration of Petitioner-Cramer's case under the appropriate standards to be enunciated by this Court.

Respectfully submitted,

Virginia Cramer, Petitioner
In Propria Persona
27314 Clairview
Dearborn Hts., Mich 48127
Telephone: (313) 278-7286

APPENDIX AA

State of Michigan
In the Supreme Court

Virginia Cramer, Plaintiff-appellant
vs
Metropolitan Savings and Loan Association, et al Defendants-appellees

No. 57215
(dated Oct 6, 1977)
reported at: 401 Mich 252

Virginia Cramer brought an action to enjoin foreclosure of a mortgage and for damages - against Metropolitan Savings and Loan Association and its officers, alleging excessive escrow demands and mishandling of the escrow funds as a defense to the foreclosure. The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default. Plaintiff's motion to file an amended complaint was denied and Edward F Bell,J., granted the defendants summary judgment on the ground of res judicata. The Court of Appeals, Danhof, P.J., and McGregor and Levin, JJ., reversed in a per curiam decision (Docket No. 9619). 34 Mich App 638; 192 NW2d 50 (1971). Plaintiff filed an amended complaint of six counts which alleged wrongful foreclosure, and other wrongdoing, and Richard L. Hammer, J., granted summary judgment for Metropolitan. The Court of Appeals, T. M. Burns, P.J., and Admas and Bashara, JJ., affirmed as to five counts, but reversed as to the count alleging breach of fiduciary relationship (Docket No. 14149). A jury in Circuit Court, John R. Kirwan, J., found no cause of action

against the defendants on the allegation of a breach of a fiduciary duty. The Court of Appeals, R. B. Burns, P.J., and T. M. Burns and R. M. Maher, JJ., affirmed (Docket No. 18948). The plaintiff appeals.
Held:

1. The existence of a statute which permits a mortgagee to foreclose a mortgage by advertisement rather than by judicial process does not constitute state action under the Equal Protection Clauses of the Michigan and Federal Constitutions. Since the power of sale is an incident of the private right to contract, a mortgagee who exercises a foreclosure option is relying on a contract remedy, and not on a right created by statute.

2. The remedy for breach of a covenant is damages or an injunction, whereas the remedy for default on a condition subsequent is termination of the contract. The question whether a particular provision in a contract is a condition or a covenant depends in large part on the language of the contract, interpreted with the intent of the parties as the paramount consideration. Under the terms of the mortgage in the instant case, plaintiff failed to perform a covenant to pay monies into escrow, the performance of which was a condition of the contract. The remedy authorized by the mortgage was termination by foreclosure of the mortgage. This case does not involve a mere technical breach of the contract by the mortgagor, but a refusal to make the payments as agreed.

Affirmed.

Filed October 6, 1977 - No. 57215
STATE OF MICHIGAN SUPREME COURT

BEFORE THE ENTIRE BENCH (except Moody, J.)
KAVANAGH, C.J.

This appeal arises out of a mortgage foreclosure on plaintiff's property by the defendant after the latter accelerated the debt because of an alleged deficiency in plaintiff's "escrow" account. The parties have been before the Court of Appeals in this matter on three occasions, the last appeal to that Court resulting in an affirmance of a jury's verdict for defendant on a breach of fiduciary duty count brought by plaintiff.

This Court granted leave to consider plaintiff's allegations of error in all of the proceedings below.

In June, 1963, plaintiff executed a mortgage application to defendant Metropolitan Savings and Loan Association (hereinafter "Metropolitan") which then issued a "commitment letter", dated July 3, 1963, setting forth the conditions of the loan.

Pursuant to that commitment, plaintiff executed a promissory note secured by a mortgage delivered to defendant on July 29, 1963.

The mortgage included the following terms:

"Mortgagor covenants and agrees: * * *

"2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises that will next

become due, (and) an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) * * * . The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefore, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be hald by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sum so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefore, the excess shall be credited upon principal. * * *

"8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declar the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided

by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option." * * *

The parties also executed a "Loan Settlement Statement", which itemized the monthly payments as follows:

Principal and Interest	$103.81
Tax Escrow	22.25
Insurance Escrow	4.00
MGIC (Mortgage Guaranty Insurance Company) Premium	3.44
	$133.50

The mortgage note, in the amount of $16,500, provided for a monthly payment of $103.81, constituting principal and interest, and made no mention of any other amount for escrow or mortgage insurance premium.

For a period of time, plaintiff made timely payments, including escrow, and in fact, was well ahead of her repayment schedule for principal. There was a continuing dispute, however, over the escrow account, with plaintiff alleging that defendant had not paid her taxes and escrow premiums when due and that defendant was requiring excessive escrow payments.

Defendant admits that it allowed plaintiff's 1963-1964 taxes to become delinquent, but in 1965 paid the back taxes, including all penalties. Plaintiff finally stopped the escrow payments, and stated that she wished to make her tax and insurance payments directly. Plaintiff admits in her brief that she did not maintain a current escrow account.

On May 23, 1968, defendant instituted foreclosure proceedings by advertisement pursuant to MCLA 600.3201 et seq.; MSA 27A.3201 et seq., and paragraph 8 of the mortgage agreement. Defendants complied in all respects with the requirements of the statute.

Plaintiff obtained a temporary restraining order, which was subsequently dissolved after the court determined that plaintiff was in default of her mortgage. The property was sold at a sheriff's sale on October 1, 1968 and plaintiff redeemed the property on June 5, 1969.

Following several judicial proceedings, including an appeal to the Court of Appeals, (34 Mich App 638; 192 NW2d 50 (1971), plaintiff was allowed to file an amended complaint, which alleged breach of contract, abuse of process, libel, breach of fiduciary duty, invasion of privacy, and intentional infliction of emotional distress. Summary judgment was granted for defendant on March 27, 1972.

In an unpublished per curiam opinion (Docket No. 14149, released May 29, 1973), the Court of Appeals affirmed on all counts except that charging breach of fiduciary duty, which was remanded for trial. The subsequent jury trial on that issue resulted in a verdict for defendants, and judgment was entered September 21, 1973.

The Court of Appeals affirmed on June 2, 1975.

I

The appeal raises two questions which merit discussion. First, plaintiff questions the constitutionality of the Michigan

foreclosure by advertisement statute, which provides in part:

> "Every mortgage of real estate, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified."
> MCLA 600.3201, MSA 27A.3201.

> "To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite:
> "(1) That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative * * * ."
> MCLA 600.3204, MSA 27A.3204

The essence of plaintiff's constitutional argument is that the foreclosure statute grants a mortgagee the power to terminate a mortgage relationship by use of procedures that are not in harmony with the requirements of the Fourteenth Amendment to the United States Constitution and Article 1, section 17 of the Michigan Constitution. Specifically, she claims that the Michigan foreclosure by advertisement statute, as applied, violated the due process clauses of the two constitutions in that it requires neither a notice of hearing, nor a hearing to establish the debt.

Plaintiff's argument rests upon the United States District Court's decision in Northrip v Federal National Mortgage Ass'n, 372 FSupp 594 (ED Mich, 1974).

There the court acknowledged that a due process question is raised only where there is state action, the test for which is whether or not the state has significantly involved itself in the challenged conduct. The Northrip court held that state action was present because the "statute encourages mortgagees to seek foreclosure by advertisement, rather than by judicial process * * * ." 372 FSupp 597.

The district court also ruled that while a power of sale may be deemed to waive the right to a due process hearing before foreclosure by advertisement, there was no such waiver in the case before it. The plaintiff had not "voluntarily, intelligently and knowingly" waived her due process rights because the power of sale did not include any terms of waiver, nor did it notify plaintiff of the procedure to be utilized in foreclosing upon her property.

The district court ultimately held that the statute, as applied, did not satisfy minimum due process requirements "because the process failed to provide an adequate opportunity to be heard before the taking of a significant property interest." 372 F Supp 599.

Plaintiff in her brief fails to note, however, that the lower court decision in Northrip was subsequently reversed. The Sixth Circuit Court of Appeals disavowed the state action analysis employed and the result reached by the district court. 527 F2d 23 (CA 6, 1975)

The Federal appellate court held that the existence of a statute which permitted a mortgagee to foreclose by advertisement rather than by judicial process did not

constitute state action.

Since "the power of sale is an incident of the private right to contract. Equitable Trust Co. v Barlum Realty Co. 294 Mich 167; 292 NW 691 (1940) ", a mortgagee who exercises a foreclosure option is relying on a contract remedy, and not on a right created by the statute. 527 F2d 26-27. Therefore, the state cannot be said to be significantly involved, through "encouragement", in the challenged conduct, and a due process question is consequently not presented.

Our own Court of Appeals in National Airport Corp v Wayne Bank, 73 Mich App 572; 252 NW2d 519 (1977), has recently adopted the Sixth Circuit's full and definitive analysis of the Michigan foreclosure by advertisement statute. We do likewise.

Accordingly, we hold that the plaintiff's instant claim of unconstitutionality under both the Michigan and Federal Constitutions fails for lack of the existence of state action.

II

We next consider whether or not plaintiff's refusal to make timely escrow payments for taxes and insurance constituted a "default * * * in any condition of (the) mortgage", allowing foreclosure by advertisement pursuant to MCLA 600.3201; MSA 27A.3201.

The mortgage provides that:

"Mortgagor covenants and agrees:

* * *

"2. In order more fully to protect

the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments - levied or to be levied against said premises that will next become due, (and) an installment of the premium or premiums that will next become due to renew the insurance on said premises * * * ."

Paragraph eight of the mortgage further provides that in the event of default "in the performance of any of the covenants or conditions hereof", mortgagee may accelerate the full indebtedness and sell the property pursuant to the statute.

It is plaintiff's argument that the above provisions in the mortgage constitute a covenant, the remedy for breach of which is an action for damages or an injunction.

Defendants, on the other hand, contend that paragraphs 2 and 8, when read together, make monthly payments into escrow a condition, and default thereon allows foreclosure by advertisement.

Commonly, a covenant is regarded as an assurance that something will be done in the future, while a condition is regarded as "a fact or event that affects legal relations; it is a cause of some change in those legal relations". 3A Corbin, Contracts, sections 627, 633. The remedy for breach of a covenant is damages or an injunction, whereas the remdy for default on a condition subsequent is termination of the contract. Capitol Land Co v Zorn, 134 Ind App 431, 433; 184 NE2d 152, 158 (1962); 17A CJS, Contracts, sections 339, 399.

The question whether a particular

provision in a contract is a covenant or, alternatively, a condition, does not admit of an absolute answer. Rather, the resolution of the issue depends in large part on the contract, with the intent of the parties being the paramount consideration, McIntosh v Groomes, 227 Mich 215; 198 NW 954 (1924)

Recognizing the parties' prerogative to provide for their own contract, we said in White v Burkhardt, 338 Mich 235, 239; 60 NW2d 925 (1953):

> "Foreclosure of mortgages by advertisement and sale has been in use in this State for about 100 years, and is well understood. Such statutory foreclosures whould not be set aside without some good reason therefor. Markoff v Tournier, 229 Mich 571, and Detroit Trust Co v Agozzinio, 280 Mich 402, 496. Statutory foreclosures are a matter of contract, authorized by the mortgagor, and ought not to be hampered by an unreasonably strict construction of the law. Lee v Clary, 38 Mich 223, and Peterson v Jacobs, 303 Mich 329, 335."

We are convinced that under the terms of the contract before us, plaintiff has defaulted on a condition. By refusing to pay monies into escrow, plaintiff failed to perform a covenant the performance of which was a condition of the contract. 3A Corbin, supra, sections 633, 635. Plaintiff agreed that Metropolitan would have the option of foreclosing pursuant to the statute if she did not perform her covenant. The remedy is concededly a harsh one, but "harshness or hardship alone will not defeat a foreclosure". Schechtman v Grobbel, 226 So 2d 1, 3 (Fla Dist Ct App, 1969)

Despite plaintiff's insistence to the contrary, this case does not involve a mere technical breach by the mortgagor as was present in Schechtman, supra. In that case the Florida District Court of Appeals refused to allow foreclosure where the mortgagor paid escrow monies to a bank rather than to the mortgagee, as required by the mortgage. The court emphasized that, even though the payment was made to the wrong institution, the escrow balance was at all times current and the security of the mortgage was never in jeopardy. Here plaintiff refused to make the payments.

We agree with the trial court and the Court of Appeals that the foreclosure was licit.

Affirmed. Costs to defendant.

THOMAS GILES KAVANAGH
CHARLES L. LEVIN
MARY S. COLEMAN
G. MENNEN WILLIAMS
JOHN W. FITZGERALD
JAMES L. RYAN

APPENDIX BB

THIS MORTGAGE, made this 29th day of July, 1963 between Virginia Cramer of the City of Detroit, County of Wayne, Michigan, mortgagor, and METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation existing under the Home Owner's Loan Act of 1933 of the United States of America, Mortgagee:

WITNESSETH: That mortgagor, for and in consideration of the sum of Sixteen Thousand Five Hundred and No/100 dollars ($16,500.00), the receipt whereof is hereby acknowledged,

and for the purpose of securing the re-payment of said sum, with interest, as hereinafter provided, and any additional sums which mortgagor (jointly or severally, if more than one joins herein) may now or hereafter owe mortgagee, for which this mortgage shall be a continuing security, and of securing the performance of the covenants and conditions hereafter contained, hereby mortgages and warrants unto mortgagee the premises situated in the City of Dearborn Heights, County of Wayne, Michigan, described as follows:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded in L80 P2 Wayne County Records.

Recorded: Aug 13, 1963 at
10:05 O'clock AM
BERNARD J. YOUNGBLOOD,
Register of Deeds
Wayne County 26, Michigan

together with all easements and rights of way now or hereafter used in connection therewith and all fixtures (which shall include all articles that are ever furnished by a landlord in letting or operating an unfurnished building which are now or shall hereafter be attached to said premises in any manner).

Mortgagor covenants and agrees:

1. To pay to mortgagee at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 dollars, ($16,500.00), with interest thereon, according to the terms of a promissory note bearing even date herewith execut-

ed by mortgagor to mortgagee, which matures on the 15th day of August 1988, and to pay when due any additional sums which mortgagor may now or hereafter owe mortgagee, as aforesaid.

2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises, that will next become due, an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) and, if any life insurance is payable or assigned to mortgagee as additional security for said indebtedness, an installment of the premium or premiums that will next become due thereon. The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon principal.

3. To keep all insurable property covered hereby insured against loss by fire and such other hazards as may be specified by mortgagee from time to time, in such amounts and for such periods as may be required by mortgagee, and to pay when due all premiums on any such insurance in the manner above provided. All insurance shall be carried in companies approved by mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to mortgagee. Each insurance company concerned is hereby directed to make payment for such loss to mortgagee only, and the insurance proceeds, or any part thereof, may be applied by it upon any indebtedness secured hereby or to the restoration or repair of the property damaged, at its option, and any surplus shall be paid to mortgagor.

4. To pay when due all taxes, assessments and other charges which are now or shall hereafter be a lien against said premises, or any part thereof, and for which provision has not been made hereinbefore.

5. To keep all property covered hereby in good repair and condition, to comply promptly with all laws, ordinances, regulations or requirements of any governmental authority applicable hereto, and to abstain from the commission of waste.

6. Should any default be made in the covenants or conditions hereof, mortgagee may, without demand or notice, pay any taxes, assessments, premiums or liens required to be paid by mortgagor, make repairs, effect any insurance provided for herein, cause the abstract of title and tax histories of said premises to be

certified to date or procure new abstracts of title and tax histories in case none were furnished to it and procure title reports covering said premises, and the sums paid for any one or all of said purposes shall from the time of the payment thereof be due, with interest thereon at the rate of seven per centum (7%) per annum, and shall constitute a further lien upon said premises under this mortgage. In the event of foreclosure the abstract or abstracts of title shall become the property of mortgagee.

7. The failure of mortgagor to pay any taxes or assessments levied against said premises, or any insurance premiums upon policies of insurance covering said premises, in accordance with the terms hereof, shall constitute waste.

8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option.

9. The covenants and conditions hereof shall bind, and the benefits and advantages thereof shall inure to, the respective heirs,

executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, this mortgage has been signed and sealed by mortgagor.

Signed, sealed and delivered
in the presence of:

/s/ Virginia Cramer (L.S.)

/s/ Frank E. Fike
/s/ Edward J. Gilroy

STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

On this 29th day of July, 1963, before me personally appeared Virginia Cramer to me known to be the persons described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

My Commission expires: 3-12-66

/s/ Edward J. Gilroy
Notary Public, Wayne
County, Michigan

STATE OF MICHIGAN)
COUNTY OF) SS.

On this _____ day of _____ 19 ____ before me appeared _____ and _____ to me personally known, who, being by me (severally and) duly sworn did say that he is (they are respectively) _____ and _____ of _____ (and that the seal affixed to said instrument is the corporate seal of said corporation) and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of said Directors;

and the said officer(s) acknowledged the said instrument to be the free act and deed of said corporation.

My Commission expires _____19__

_____

Notary Public _____ County, Michigan

APPENDIX CC

MORTGAGE NOTE - Loan No. 6326-MG
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION

$16,500.00 Detroit, Michigan, July 29, 1963

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise(s) to pay Metropolitan Federal Savings and Loan Association, or order, at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 Dollars ($16,500.00) with interest from date on any part thereof at any time unpaid at the rate of 5 & 3/4 per centum (Five & 3/4%) per annum while there is no default hereunder, or under the mortgage securing this note, and at the rate of seven per centum (7%) per annum during the period of any such default, as follows:

One Hundred Three and 81/100 Dollars ($103.81) on the 15th day of September, 1963, and a like sume on the 15th day of each calendar month thereafter until the entire indebtedness secured hereby has been paid in full.

In the event of default in any promise made in this note, or in the mortgage securing it, the holder of this note and said mortgage may, without notice, at its option declare the entire indebtedness evidenced

and secured thereby due and payable, then or thereafter, as said holder may elect, regardless of the date of maturity.

Protest, presentment, demand and notice of non-payment are hereby waived by every signor or endorser hereof.

The monthly payments herein provided for shall be applied first upon interest and the remainder upon principal.

Privilege is reserved to prepay, without premium or fee, the indebtedness in whole, or in an amount equal to one or more monthly payments on the principal that are next due on this note, on the 15th day of any month prior to maturity, provided that the monthly payment due on the said 15th day of the month shall have been paid.

At its option, in lieu of increasing the rate of interest as above provided during the period of any default, the Association may collect a "late charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments.

/s/ Virginia Cramer (L.S.)

This is to certify that this is the note described in and secured by mortgage of even date herewith and in the same principal amount as herein stated, and secured by real estate situated in Wayne County, State of Michigan.

Dated
July 29, 1963

/s/ Edward J. Gilroy
Notary Public

APPENDIX DD

United States District Court
Eastern District of Michigan
Southern Division

VIRGINIA CRAMER, Petitioner-Defendant (in wrongful foreclosure action),

— Petitioner-Plaintiff,

-v-

METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, — Jointly, severally and individually, Plaintiffs in wrongful foreclosure action,

Defendants,

and

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, Attorneys at Law, — Jointly, severally and individually,

Co-Defendants

and

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, Attorneys at Law, Jointly, severally and individually,

Co-Defendants,

and

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge,

Co-defendant,

and

C.A. No. 9 72789

Mich Supreme Court No. 62249

Mich Court of Appeals 78-3794

Wayne Circuit Court — 78-822-879 CZ

Prior Action (Wayne) No. 115-792

Mich Supreme Ct No 57215 Reported at 401 Mich 252

and
MICHIGAN SUPREME COURT MEMBERS,
Justices Mary S. Coleman,
Thomas Giles Kavanagh, Charles L.
Levin, John W. Fitzgerald,
James L. Ryan, Blair Moody, Jr.,
Jointly, severally and individ-
ually,

Co-Defendants

ORDER OF DISMISSAL IN PART AND
ORDER OF REMAND IN PART

At a session of said Court held in the Federal Building, in Detroit, Michigan, on January 17, 1980.

PRESENT: Honorable Anna Diggs Taylor,
U.S. District Court Judge

On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the Court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and

that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed.

/s/ ANNA DIGGS TAYLOR
United States District Court
Judge

Dated:
January 17, 1980

APPENDIX EE

United States Court of Appeals
for the Sixth Circuit

VIRGINIA CRAMER, Plaintiff-appellant v. METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, ET AL., Defendants-Appellees	Filed May 5, 1980 No. 80-1118 O R D E R

BEFORE: WEICK, LIVELY and JONES,
Circuit Judges

This cause came before the Court upon the motion of the plaintiff-appellant to stay pending appeal an order of the district court which dismissed in part and remanded in part a civil rights and attorney malpractice action removed from state court, and upon the motion of one of the defendant-appellees to dismiss the appeal from that part of the district court order remanding the claims against him to the State Court.

The Court has considered the motions and memoranda offered in support thereof, and has reviewed the record of the district court including relevant pleadings and decisions in earlier state court litigation, and concludes therefrom the appellant has not shown entitlement to the requested stay; Reed v Rhodes, 549 F.2d 1046 (6th Cir. 1976). It is further concluded that the issues upon which the decision of the remainder of the cause depends are so unsubstantial as not to need further argument, and that the motion to dismiss is well taken.

It is

Therefore ORDERED that the motion to stay be, and it hereby is, denied. It is further ORDERED that the appeal from that part of the judgment remanding the cause to the state court be, and it hereby is, dismissed; Rule 9(d)1, Rules of the Sixth Circuit. It is ORDERED that the balance of the judgment of the district court be, and it hereby is, affirmed; Rule 9(d)3, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman, Clerk